

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
TOWN OF LA CENTER,

Appellant,

v.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 85-59

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW

THIS MATTER, the appeal of a \$250 civil penalty and citation for allowing overflow of raw sewage from a municipal treatment plant, came on for hearing before the Board at its hearing room in Lacey on September 17, 1985. Seated for and as the Board were Lawrence Faulk, Wick Dufford, and Gayle Rothrock (presiding). The matter was reported by Bibi Carter, court reporter. Respondent agency elected a formal hearing.

Appellant town was represented by its mayor, C.R. "Skip" Carlson. Respondent WDOE was represented by Assistant Attorney General Jay J. Manning.

1 Witnesses were sworn and testified. Exhibits were admitted and  
2 examined. Argument was heard. From the testimony, evidence, and  
3 contentions of the parties the Board makes these

#### 4 FINDINGS OF FACT

##### 5 I

6 LaCenter is a town in Clark County which has been under a building  
7 moratorium since 1979 and has embarked on a program - in fits and  
8 starts - of expansion and upgrading of its municipal sewage treatment  
9 plant (STP). This has involved application of new technology, a  
10 grants-in-aid exercise, construction contracting and monitoring, and  
11 securing new trained personnel. It is acknowledged that such an  
12 endeavor can be quite an undertaking for a small town.

##### 13 II

14 The Washington State Department of Ecology (WDOE) is an agency  
15 authorized to implement the water pollution control statutes and, in  
16 that capacity, to monitor the treatment and disposal of municipal and  
17 industrial sewage in this state. This may include dispensing federal  
18 and state funds to assist with upgrading and dispensing engineering  
19 advice through periodic reviews during design and construction phases  
20 of any particular project.

##### 21 III

22 The Town of LaCenter has an agreement with Clark County Public  
23 Works to provide analytical services and a certified operator to  
24 oversee the STP and process control adjustments. Clark County  
25 personnel spend approximately one hour per day at the LaCenter STP

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
PCHB No. 85-59

1 performing these duties. The daily cleaning and maintenance duties  
2 remain the responsibility of Twon staff.

3 As referenced earlier, the Town is also in the construction phase  
4 of a WDOE grant-funded facility upgrade project. As part of the  
5 project design, an influent screen was installed at the headworks for  
6 solids removal. It is the town's responsibility to keep the screen  
7 cleaned and because of inadequate attention to this requirement, the  
8 effluent overflowed onto the ground on two documented occasions  
9 preceding the event under appeal; the weekend of October 27, 1984 and  
10 the weekend of December 15, 1984.

11 At all times relevant to this case, the Town's operation of its  
12 treatment plant was subject to the terms and conditions of a National  
13 Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit  
14 (No. WA-002323-0) issued to it by WDOE.

15 IV

16 On October 29, 1984 a WDOE inspector visited the town's STP, which  
17 had no operator on duty, and observed problems with maintenance  
18 ("housekeeping") at the facility, including the presence of floatable  
19 solids in the clarifier, the flowmeter script chart being out of  
20 paper, and errant sewage on the ground requiring cleanup,  
21 disinfection, and disposal. He also observed problems with the  
22 influent screen, including difficulty handling surge flow whenever the  
23 pump activates, overflowing of the screen and incorrect ultimate  
24 disposal of screening wastes, and inadequate cleaning of the screen.  
25 Raw sewage was on the plant grounds and, at a slow pace, making its

1 way to the fence and beyond.

2 Following this visit the inspector wrote the town's mayor to note  
3 these problems and issue two points of advise and make one request for  
4 remedy and a report, as noted here:

5 You are advised to contact Mr. Duane Blunt,  
6 Washington Department of Ecology (WDOE) Project  
7 Engineer, to resolve the issues concerning the  
8 influent screen unit.

9 In addition, my inspection showed an obvious lack  
10 of house cleaning and general maintenance. It is  
11 my understanding that Clark County employees show  
12 up for one hour per day to collect samples for  
13 analytical purposes and to make necessary process  
14 control adjustments only. Their responsibilities  
15 do not include daily testing, cleaning,  
16 maintenance, and repair. There is a definite need  
17 for additional man-hours to be spent at the plant  
18 performing these general duties.

19 Therefore, the Town of LaCenter is requested to  
20 resolve this issue within ten days from the date of  
21 this letter and submit a report to this office  
22 identifying steps taken to correct the problem.

23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

V

At the town's request, a meeting was held on December 14, 1984 between the Town and WDOE. The ultimate disposal of screened solids was identified as a problem as well as general attention to operation of the plant on an on-going basis. The Town agreed to submit an operation and solids disposal plan for the screened solids by January 15, 1985. For the interim, WDOE orally granted the town's request to bypass the screen. The Town further agreed to submit a status report on hiring a new operator by January 1, 1985.

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
PCHB No. 85-59

1 VI

2 On the weekend of December 15, 1984, another overflow occurred due  
3 to clogging at the influent screen. Notwithstanding the agreement to  
4 allow bypassing (or removing) the screen, it was still in place on  
5 this occasion.

6 VII

7 On December 24, 1984 the town again experienced a raw sewage  
8 overflow onto the ground at the STP. At this time the influent screen  
9 still had not been removed. The cause was screen clogging as with the  
10 prior overflows.

11 The matter was reported to DOE on December 27, 1984, by the county  
12 employee performing services at the plant pursuant to agreement.

13 DOE's inspector visited to the plant on December 28, 1985, and  
14 documented the problem with photographs.

15 VIII

16 The Town's NPDES permit contains numerous conditions of  
17 operation. Supplemental Condition S5 (a)(1) of the Town's NPDES  
18 permit states:

19 In accordance with WAC 173-230, the permittee shall  
20 provide an adequate operating staff which is  
21 qualified to carry out the operation, maintenance  
22 and testing activities required to ensure  
23 compliance with the conditions of this permit. An  
operator certified for a Class II plant by the  
State of Washington shall be in responsible charge  
of the day-to-day operation of the wastewater  
treatment plant.

24 Supplemental Condition S5 (a)(3) reads:

25 The permittee shall institute an adequate operation  
26 and maintenance program for their entire sewage

1 system. This program shall include such items as  
2 sewer cleaning, pump station maintenance and other  
3 system maintenance activities. Record are to be  
4 kept on all such activities.

5 General Conditions G1, G2, and G4 state, in pertinent part:

6 G1 All discharges and activities authorized by this  
7 permit shall be consistent with the terms and  
8 conditions of this permit. The discharge of any  
9 pollutant more frequently than or at a level in  
10 excess of that authorized by this permit shall  
11 constitute a violation of the terms and conditions  
12 of this permit.

13 G2 The permittee shall at all times maintain in  
14 good working order and operate as efficiently as  
15 possible all facilities and systems (and related  
16 appurtenances) for collection and treatment which  
17 are installed or used by the permittee for water  
18 pollution control and abatement to achieve  
19 compliance with the terms and conditions of this  
20 permit.

21 G4 If, for any reason, the permittee does not  
22 comply with or will be unable to comply with any of  
23 the discharge limitations or other conditions  
24 specified in the permit, the permittee shall, at a  
25 minimum, provide the department with the following  
26 information:

27 a. A description of the nature and cause of  
noncompliance, including the quantity and quality  
of any unauthorized waste discharges;

b. The period of noncompliance, including exact  
dates and times and/or the anticipated time when  
the permittee will return to compliance; and

c. Steps taken or to be taken to reduce,  
eliminate, and prevent recurrence of the  
noncompliance.

In addition, the permittee shall take immediate  
action to stop, contain, and clean up any  
unauthorized discharges and take all reasonable  
steps to minimize any adverse impacts to waters of  
the state and correct the problem. The permittee  
shall notify the department immediately by  
telephone so that an investigation can be made to

1 evaluate any resulting impacts and the corrective  
2 actions taken to determine if additional action  
should be taken.

3 IX

4 Noting the December 24, 1984 incident and the NPDES permit  
5 non-compliance and, further, reflecting on agreements with the town  
6 and pledges made by the town in mid-December, for which there were no  
7 signs of progress by late January 1985, WDOE staff recommended  
8 enforcement action.

9 X

10 On February 8, 1985, Notice of Penalty Incurred and Due No. DE  
11 85-158 assessing a \$250 civil penalty for the sewage overflow event of  
12 December 24, 1985, was issued. The notice stated:

13 This overflow was a result of a lack of operation  
14 and maintenance at the facility and the Town's  
15 failure to comply with NPDES Waste Discharge Permit  
No. WA-002323-0, Supplemental Requirements S5  
(a)(1) and (3) and General Conditions G1, G2 and G4.

16  
17 An Application for Relief from Penalty was filed with WDOE citing  
18 various political and financial difficulties experienced by the town  
19 government. Also noted was an attempt to clean the bar screen and a  
20 plugged line on December 24th which resulted in a "flood" of water and  
21 raw sewage immediately overflowing the influent screen again. The  
22 town submitted change orders to correct the influent screen design  
23 problem and argued that it had been ill-advised by WDOE to endorse the  
24 failure-prone design when the screen was first secured.

25 WDOE did not grant relief and so stated in an official notice and  
26 letter to the town dated March 12, 1985.

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
PCHB No. 85-59

XI

Feeling aggrieved by these actions the town, on April 8, 1985, addressed an appeal to the Board and the matter was filed on April 16, 1985 and set for hearing under cause number PCHB 85-59.

XII

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these persons and these matters. Chapters 43.21B and 90.48 RCW

II

RCW 90.48.162 requires municipalities operating sewerage systems to procure waste disposal permits. The NPDES permit issued to LaCenter is an example of such a permit, fulfilling the demands of both state and federal law. RCW 90.48.260. The permit was issued under the authority of RCW 90.48.180.

III

RCW 90.48.144 empowers the Department of Ecology to impose civil penalties, on a strict liability basis. In pertinent part, it reads:

Every person who:

(1) Violates the terms or conditions of a waste discharge permit issued pursuant to RCW 90.48.180 . . . shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to five thousand dollars a day for every such violation. Each and every such violation shall be

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
PCHB No. 85-59



1 a separate and distinct offense, and in case of a  
2 continuing violation, every day's continuance shall  
be deemed a separate and distinct violation. . . .

3 IV

4 We conclude that on December 24, 1984, La Center violated the  
5 operation and maintenance provisions of its NPDES permit as stated in  
6 conditions 55(a)(1) and (3) and G1, G2 and G4.

7 V

8 Here the Department of Ecology imposed a penalty in order to spur  
9 the city to action, after expending considerable time preliminarily  
10 trying to get the problem solved by other methods. The purpose of the  
11 penalty provision of the statute is primarily to influence behavior  
12 and, under the facts, its use appears to have been appropriate here.

13 In exercising its penalizing discretion, WDOE recognized the  
14 financial limitations of the town and imposed a fine which can only be  
15 viewed as minimal. All of the permit infractions were, in effect,  
16 treated as a single violation, the charge was limited to a single day  
17 and the dollar amount was at the lower end of the range of  
18 possibilities.

19 VI

20 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
21 adopted as such.

22 From these Conclusions of Law, the Board enters this  
23  
24  
25

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
PCHE No. 85-59

ORDER

The civil penalty of \$250 imposed upon the Town of LaCenter is affirmed.

POLLUTION CONTROL HEARINGS BOARD

Gayle Rothrock  
GAYLE ROTHROCK, Vice Chairman

Lawrence J. Paulk 12/11/85  
LAWRENCE J. PAULK, Chairman

Wick Dufford  
WICK DUFFORD, Lawyer Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
PCHB No. 85-59